

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

CYNTHIA L. MERLINI,

Plaintiff,

vs.

CANADA,

Defendant

Civ. A. No. 1:17-cv-10519-NMG

**JOINT STATEMENT**

The parties jointly submit the following statement pursuant to Local Rule 16.1(d).

1. Joint Discovery and Motion Plan.

The parties have been diligently exchanging information and preparing for mediation.

The parties jointly submit the following schedule, which sets an outside date of March 26, 2021 for the parties to report the case settled or not settled.

Event	Deadline after parties' report about settlement	"No later than" date
Answer or motion to dismiss due	30 days	April 23, 2021
Requests for production and interrogatories served	45 days	May 7, 2021
Depositions and other fact discovery complete	10 months	January 21, 2022
Motions for summary judgment filed	11 months	February 25, 2022
Trial experts identified and reports exchanged	12 months	March 25, 2022
Rebuttal experts identified and reports exchanged	13 months	April 22, 2022
Expert depositions completed	14 months	May 20, 2022

2. Other Matters to Be Discussed.

The plaintiff submits that the Court should address the question whether a second pre-answer motion to dismiss will be permitted. The plaintiff's position is that after a first pre-answer motion to dismiss is denied (or, as in this case, denied on appeal), the defendant must answer and the case should proceed, even though the defendant may then file another motion to dismiss for lack of jurisdiction or a motion for summary judgment. *See Fed. R. Civ. P. 12(a)(4)(A)* (if a pre-answer motion to dismiss is denied, "the responsive pleading must be served" within 14 days).

The defendant believes that while settlement efforts are ongoing, it is premature to decide whether the defendant will file a motion to dismiss. However, the defendant reserves the right to file a motion to dismiss prior to an answer in accordance with Fed. R. Civ. P. 12(h)(3). *See, e.g., BP Chems. Ltd. v. Jiangsu SOPO Corp.*, 420 F.3d 810, 811-12 (8th Cir. 2005) (addressing a second, evidence-based, motion to dismiss under the Foreign Sovereign Immunities Act ("FSIA") after a first FSIA motion to dismiss based on the face of the pleadings had been denied).

Respectfully submitted,

CYNTHIA L. MERLINI

By her attorney:

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CANADA

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